

STATE OF MICHIGAN
COURT OF APPEALS

DARRELL LAMAR MARSHALL,

Plaintiff-Appellant,

v

CENTRAL MEDICAL IMAGING MRI & CT
CENTER and COVENTRY CARE OF
MICHIGAN,

Defendants-Appellees,

and

HARANATH POLICHERLA MD ACP and
POINTE NEUROLOGY,

Defendants.

UNPUBLISHED

April 17, 2014

No. 313624

Wayne Circuit Court

LC No. 12-010777-NO

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Darrell Lamar Marshall, appeals as of right from two separate orders granting summary disposition in favor of defendants, Central Medical Imaging MRI & CT Center (CMI) and Coventry Care of Michigan (Coventry).¹ Finding no errors warranting reversal, we affirm.

I. BASIC FACTS

Acting on his own behalf, plaintiff filed a complaint and a motion for preliminary injunction against defendants. The complaint stated that “on or about July 5, 2012 plaintiff started neurological testing with doctor Haranath Policherla at Pointe Neurological Medical Clinic.” According to the complaint, Dr. Policherla was evaluating plaintiff for “a mass on the brain and a diagnosed history of stroke.” Plaintiff alleged that Dr. Policherla informed plaintiff that “the stroke had healed and the mass on the brain was not causing any medical problems.” Plaintiff stated that Dr. Policherla diagnosed plaintiff with a sleep disorder. According to

¹ Defendants Haranath Policherla and Pointe Neurology were dismissed by stipulation.

plaintiff, Dr. Policherla ordered an “MRI with contrast.” Plaintiff alleged that CMI performed the MRI but refused to “conduct the MRI with contrast.” Plaintiff asserted that the MRI with contrast “will help determine if the medical and psychological problems plaintiff suffers was [sic] caused by a sleep disorder, a stroke, or a physical injury.”

The complaint alleged that defendants “committed acts of medical fraud, fraudulent concealment, and conspired to conceal medical injuries that causes [sic] episodes of incompetency and could cause death.” Plaintiff alleged that Coventry “committed acts of Gross, Reckless, and Criminal Negligence.” Plaintiff stated that defendants “acted with malice aforethought, (evil intent) and caused plaintiff to suffer punitive and compensatory damages.” The complaint also alleges several constitutional violations under the Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The trial court granted defendants summary disposition pursuant to MCR 2.116(C)(8), stating,

I really think, Mr. Marshall, that you ought to consult an attorney . . .if you wish to bring this litigation further. But as I’ve reviewed the motion and the brief—I know you’re representing yourself—but there’s certain requirements that have not been met both from a pleading perspective, which is a basic matter. Secondly, from a factual basis, there’s a lack of factual evidence which you’ve presented here. And lastly, you failed to state claims which are cognizable legal claims, civil legal claims in this particular case.

The trial court denied plaintiff’s motion to amend his complaint because “the proposed amendments don’t address the deficiencies that are contained in the original complaint.”

Plaintiff now appeals as of right.

II. ANALYSIS

Plaintiff’s brief on appeal is lacking in facts, argument and law. “It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court. And, where a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) (internal citations omitted). In any event, no error occurred.

1. SUMMARY DISPOSITION

“This Court reviews de novo a trial court’s decision to grant summary disposition.” *Diamond v Witherspoon*, 265 Mich App 673, 680; 696 NW2d 770, 775 (2005). “A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint solely on the basis of the pleadings” and should be granted if no factual development could possibly justify recovery.” *Wengel v Wengel*, 270 Mich App 86, 91; 714 NW2d 371 (2006).

Plaintiff’s complaint is difficult to understand. It appears that he claimed constitutional violations, negligence, medical malpractice, and discrimination.

Plaintiff has failed to state a constitutional claim because plaintiff did not establish that defendants were state actors. “Constitutional protections apply to governmental action only . . .” *City of Grand Rapids v Impens*, 414 Mich 667, 673; 327 NW2d 278 (1982).

Plaintiff also fails to state a claim for negligence or medical malpractice. “A common-law negligence claim requires proof of (1) duty; (2) breach of that duty; (3) causation, both cause in fact and proximate causation; and (4) damages.” *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18, 21-22; 762 NW2d 911 (2009). Similarly, “[i]n order to establish a cause of action for medical malpractice, a plaintiff must establish four elements: (1) the appropriate standard of care governing the defendant’s conduct at the time of the purported negligence, (2) that the defendant breached that standard of care, (3) that the plaintiff was injured, and (4) that the plaintiff’s injuries were the proximate result of the defendant’s breach of the applicable standard of care.” *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). The only facts plaintiff alleged were that Dr. Policherla was treating plaintiff, Dr. Policherla diagnosed plaintiff with a sleep disorder, and that CMI refused to perform an MRI with contrast. Plaintiff neither alleges that CMI owed plaintiff a legal duty, nor does he state how it breached that duty. Plaintiff does not state how he was harmed by any of the defendants. The portion of the complaint that could be described as a statement of facts does not even mention Coventry.

The claim that Coventry discriminated against plaintiff based on “sex and disability” suffers from the same defect as the negligence claim. There are simply no facts in the complaint alleging when or how Coventry discriminated against plaintiff. MCR 2.111(B) requires a complaint to contain “specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend.” Here, plaintiff’s complaint falls short of this pleading requirement because it does not reasonably inform Coventry of what it is being asked to defend. “It is axiomatic that conclusory statements unsupported by factual allegations are insufficient to state a cause of action.” *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 544; 730 NW2d 481 (2007).

Because plaintiff did not provide legal or factual support for any cognizable claim, the trial court did not err in granting summary disposition pursuant to MCR 2.116(C)(8).

2. PRELIMINARY INJUNCTION

“This Court reviews a trial court’s grant or denial of a temporary injunction for abuse of discretion. There is an abuse of discretion when the trial court’s decision falls outside the range of principled outcomes.” *Detroit Fire Fighters Ass’n, IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008).

The trial court did not abuse its discretion when it refused to grant plaintiff’s motion for a preliminary injunction. The party seeking a preliminary injunction “bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction.” *Detroit Fire Fighters Ass’n*, 482 Mich at 34. Those elements are:

[W]hether (1) the moving party made the required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to

prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued. [*Id.*]

Plaintiff's motion for preliminary injunction merely restates several allegations in the complaint. It does not allege that there is a risk of irreparable harm. Plaintiff did not demonstrate that he would likely succeed on the merits of his claim. To the contrary, plaintiff's complaint was properly dismissed for failure to state a claim on which relief can be granted.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly